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ABSTRACT

This document provides answers to frequently asked questions about special education services provided in Florida's public schools for children and adults with disabilities, and is based on a 1999 conference held by the Florida Department of Education and other agencies for families and individuals with disabilities. The 30 questions and answers are organized under the following categories: (1) federal/state requirements; (2) assistive technology; (3) role of the Florida Department of Education; (4) opportunity scholarships; (5) programs in the Department of Juvenile Justice facilities; (6) programs for adults with disabilities; and (7) teacher qualification. Three appendices include descriptions of Exceptional Student Education parent services, a summary of procedural safeguards for students with disabilities, and a summary of procedural safeguards for students who are gifted. (DB)

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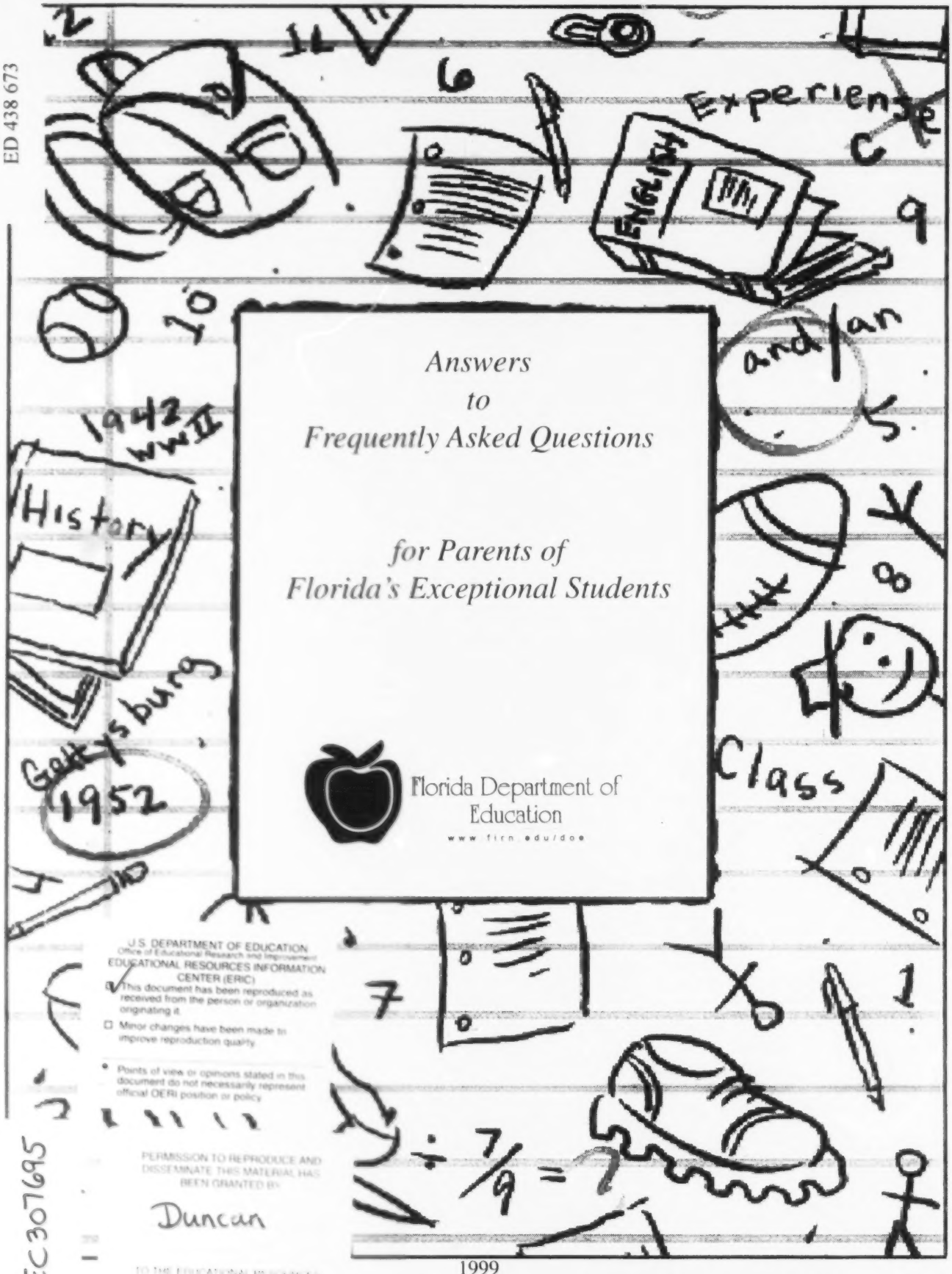

Answers to Frequently Asked Questions for Parents of Florida's Exceptional Students

Florida Department of Education

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Answers to Frequently Asked Questions

For Parents of
Florida's Exceptional Students

Bureau of Instructional Support and Community Services
Division of Public Schools and Community Education
Florida Department of Education

Florida Department of Education
Bureau of Instructional Support and Community Services

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Foreword

In May of 1999, the Florida Department of Education partnered with family groups and agencies from around the state in sponsoring the Family CAFÉ, a conference by families for families and individuals with disabilities. In conjunction with the Family CAFÉ conference, Governor Jeb Bush held the first annual Governor's Summit on Disabilities. Governor Bush invited audience members to participate in the Summit, and many important issues were raised. Educational issues were forwarded to the Bureau of Instructional Support and Community Services (BISCS) at the Florida Department of Education.

Because the questions raised at the Family CAFÉ conference participants are of interest to most families, the Florida Department of Education has compiled the questions and answers into this booklet. Also included are a section on parent services and a copy of procedural safeguards for students who are gifted and for those with disabilities. It is hoped that this information will be helpful to many families. Additional copies can be ordered at the

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Federal/State Requirements

1. What is the Individuals with Disabilities Education Act (IDEA)?

IDEA is the federal law that entitles children with disabilities to a free appropriate public education (FAPE). If a child is eligible, an educational program must be provided that

- meets the individual needs of the child
- includes teaching, special materials, and other necessary educational services
- is at no cost to the parent

In Florida, students with special needs who meet the eligibility criteria are called exceptional students. The special help they are given at school is called exceptional student education (ESE).

There are thirteen categories of disabilities which qualify children for special education services under IDEA. Sometimes the state uses different terminology than that used in IDEA to describe a disability. For example, IDEA uses the term "mental retardation," while the State of Florida uses the term "mental handicap." In Florida, the eligibility criteria for each of the disabilities is established in the State Board of Education Rules. These rules are consistent with IDEA.

2. What are the legislative changes necessary to assure that the State of Florida is in compliance with the 1997 Amendments to the Individuals with Disabilities Education Act (IDEA)?

The Florida Department of Education (DOE) staff has reviewed the IDEA requirements and current state laws or rules. It has been determined that most requirements can be accomplished by a change in State Board of Education Rules. However, there may be minor revisions proposed to the Florida Statutes in the area of discipline.

3. Are students who are in gifted programs included under the Individuals with Disabilities Education Act (IDEA)?

No. IDEA is a civil rights law for students with disabilities. However, gifted students are considered exceptional education students in Florida. This means

- they are eligible for exceptional student education (ESE) services
- they have some procedural protections
- they have individual plans

4. What is the role of parents under the Individuals with Disabilities Education Act (IDEA)?

IDEA was reauthorized in 1997, and many of the changes made emphasize the important role that parents play in the education of their child in exceptional student education. The law is very clear that, in addition to other rights, parents have the right to

- be included in any meeting wherein evaluation, placement, or services will be discussed
- give or refuse informed consent prior to evaluation and placement
- receive a copy of the individual educational plan (IEP) at no cost
- review their child's educational records
- request an independent evaluation
- due process

5. What does due process mean?

The right to due process means there must be a procedure for parents to follow if they should have a formal disagreement with the school district about their child's education. The Florida Department of Education (DOE) has produced procedural safeguards documents for students with disabilities and for students who are gifted, which are included in this booklet. Additional copies of the procedural safeguards documents are available through the Bureau of Instructional Support and Community Services, Clearinghouse Information Center, phone (850) 488-1879, or on the web-site at http://www.firn.edu/doe/commhome/

There are several ways to attempt to resolve differences prior to filing for a due process hearing. Conversations with the teacher and principal are often helpful in clearing up misunderstandings. If the difference cannot be resolved at the school level, a district exceptional student education (ESE) staff person may be able to suggest helpful solutions. Parents should feel free to discuss their issues with district level personnel. Parents have the right to ask for an individual educational plan (IEP) meeting if they feel that changes need to be made in their child's educational programming. If the district chooses not to convene the IEP team, they are required to let the parent know their reason in writing.

If outside help is needed to resolve differences, either the parent or the district may ask for a trained mediator to come and work toward resolution. The Florida DOE sets up the mediation at no cost to the parent or the district. In mediation, parents and the district have input into the mediation agreement. Parents may request mediation in writing through the school district office.

Filing a formal complaint through the Bureau of Instructional Support and Community Services (BISCS) is available for parents who believe the district has violated a law regarding ESE Services. Personnel from the Florida DOE will investigate the complaint and issue a written finding. Either parents or districts may file for a due process hearing, if they are

unable to resolve their difference through less formal means. This hearing takes place before an administrative law judge from the Department of Administrative Hearings who serves as the hearing officer. The administrative law judge will listen to evidence from all parties in the dispute and will make a binding decision. Although attorneys are not mandatory, most parents and districts hire an attorney for this hearing.

6. What are the requirements for becoming an administrative law judge?

Administrative law judges act as due process hearing officers. Qualifications of hearing officers are established by the Florida Legislature. Section 120.65(4), Florida Statutes, states

> *The division shall employ administrative law judges to conduct hearings required by this chapter or other law. Any person employed by the division as an administrative law judge must have been a member of The Florida Bar in good standing for the preceding 5 years.*

Additional training about the Individuals with Disabilities Education Act (IDEA) and Florida's exceptional student education (ESE) laws is provided to the hearing officers through the Department of Education. The administrative law judge must be impartial, and may not be

- an employee of a public agency which is involved in the education or care of your child
- anyone who has a personal or professional interest which would conflict with their impartiality in the hearing

7. Is there a public record of due process hearings and their outcomes?

Yes. The Florida Department of Education publishes a summary of due process hearings and their outcomes semiannually. Also, a redacted copy (a copy in which the identifying information has been removed) of each due process hearing is available. These documents may be requested through the Bureau of Instructional Support and Community Services, Clearinghouse Information Center (850) 488-1879.

8. What procedures are used to determine if a student meets the qualifications for exceptional student education (ESE) services?

The process of evaluating a student for exceptional student education (ESE) services involves several steps. The first step must be a referral for evaluation completed by the parents, teacher, or other individuals. After a referral is made, the school district will decide what type of an evaluation needs to occur and will secure the parents' informed, written consent. The evaluation process is a way of collecting information about a student's learning needs, strengths, weaknesses, and other pertinent items. Information may be obtained from the following procedures that include but are not limited to screenings, tests, conferences, observations, interventions, and records review.

After all parts of the evaluation are completed, a meeting will be held to determine whether or not the student meets the eligibility criteria for any of the exceptional student education programs. Districts are required to invite parents to these and any other meetings in which decisions concerning the eligibility for an ESE program are discussed. The people attending this meeting, usually called an eligibility staffing, will review all reports, records, observations, test results, referral information, and other information provided to them by the parents, teachers, and others. The purpose of this meeting is to discuss eligibility for a special program as identified in State Board of Education Rules, not to diagnose medical conditions or other related conditions.

If a student meets eligibility criteria, then an individual educational plan (IEP) will be developed that identifies services and modifications to meet the unique needs of the student. If a student is not eligible for an ESE program, then the team may explore other programs or instructional methods from which the student may benefit.

9. What is the purpose of the Individualized Educational Plan (IEP?)

The IEP is a document developed between the parents of a student with a disability and school personnel describing the student's abilities and needs and identifying the special education and related services, modifications, and other supports designed to meet the student's unique needs.

The parents of a student with a disability are expected to be equal participants along with school personnel in developing, reviewing, and revising the IEP for their child. Being an equal participant involves participating in discussions about the student's need for special education, related services, and supplementary aids and services and joining with other IEP team members to decide what services the school district must provide to meet the unique needs of the student and provide a free appropriate public education (FAPE). Parents are able to provide critical information regarding their child and can assist in deciding how the child will be involved and progress in the general curriculum and participate in state and district-wide assessments.

The concerns of parents and the information they provide regarding their children must be considered in developing and reviewing their child's IEP. The IEP team should work toward consensus. If the team cannot reach consensus, the school district must provide the parents with a written notice of their proposal or refusal regarding the student's educational program. Parents have the right to seek resolution of any disagreements through informal procedures, mediation, a formal complaint, or due process.

10. Are there any legal timelines concerning the evaluation process and the development of the Individual Educational Plan (IEP)?

There is no specific period of time for an evaluation to occur under the Individuals with Disabilities Education Act (IDEA) or under state law. However, the IDEA requires school

districts to conduct pre-placement evaluations within a reasonable period of time after a referral for evaluation has been completed.

The timeline for conducting all required evaluations begins at the time the district suspects or has reason to suspect a child may have a disability. Thus, the amount of time that elapses from referral for evaluation to an eligibility decision may vary. For students who meet the eligibility criteria for an exceptional student education (ESE) program, a meeting to develop the IEP must be conducted within thirty days of a determination that the student needs special education and related services. An IEP must be implemented as soon as possible following the meeting in which the IEP is developed.

11. How often should individual educational plan (IEP) meetings be held?

School districts are required to initiate and conduct IEP meetings to review the IEPs of all students in exceptional student education periodically but at least once every twelve months to determine whether the annual goals are being achieved. The IEP may be revised at any time, if appropriate, to address lack of progress toward the annual goals, the results of any reevaluations, information about the student provided to or by the parents, the student's needs, or other matters. Parents of a child with a disability have the right to request an IEP meeting at any time.

Assistive Technology

12. If a child uses assistive technology to complete work at school, can the school send this technology home over the summer or at night to help with homework?

If the IEP team determines that the use of school-purchased, assistive technology at home is required in order for the student to receive a free appropriate public education (FAPE), then the school/district must make arrangements for such equipment to be available. Such a decision is made on a case-by-case basis. However, if assistive technology is purchased through private or public insurance, it may be kept with the child at all times.

13. If a district has rules that will not allow a child to use assistive technology equipment at home over the summer, can the equipment be bought with the parent's insurance and sent to school to be used to meet the child's individual educational plan (IEP) goals?

A school may use technology purchased by parent's private insurance to meet IEP goals (34 CFR 300.142 [f]). However, parents must be made aware of any future consequences of using private insurance to ensure they are not adversely affected by this decision. The school can pay for deductible or co-payments with Part B funds (34 CFR 300.142 [g] [2]). This may be a practical solution to issues of home use.

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14. Can a parent bring an expert on assistive technology to an IEP meeting, even if the expert is not a district employee?

Yes. It is appropriate to bring an individual with special technology expertise to the IEP meeting. At the discretion of the parent or the agency, the IEP team can include other individuals who have knowledge or special expertise regarding the child (34 CFR 300.344 [a][6]). It is a good idea for parents to inform the school members of the IEP team when a guest is attending.

Role of the Florida Department of Education

15. How does the Florida Department of Education (DOE) support parents of children with disabilities?

The Florida DOE provides support for parents and families of children with disabilities by providing technical assistance, training, information, and funding for projects that assist parents. A more detailed explanation of the Department's services for parents of children with disabilities has been included at the end of the question and answer section of this document.

16. How does the state make sure that districts are in compliance with state and federal regulations?

The state has an array of methods to meet its obligation to ensure that school district programs follow the requirements of state and federal regulations. These methods include reviewing of district policies, on-site monitoring of programs for students with disabilities, complaint management procedures, and ensuring due process rights. The policies and procedures approved by local school boards related to serving students with disabilities must be submitted to the Florida Department of Education for review and approval. The Department conducts on-site monitoring visits on a cyclical basis. As preparation for these visits, districts conduct self-assessment activities. When on-site, Department staff members conduct record reviews, interview district and school-based staff, review selected district policies and procedures, and obtain input from parents. When a parent or individual files a formal complaint alleging that a school district has violated state or federal law related to students with disabilities, the Department conducts an inquiry to determine the facts involved and if in fact a violation of law has occurred. If a violation is determined, school districts are required to implement specific corrective actions. Lastly, due process hearings provide another avenue of review of district procedures to ensure compliance with federal and state regulations.

17. How are parents involved in the monitoring process?

In 1999, a pilot project to include parents in the monitoring process was conducted by the Florida Department of Education through the University of Miami. In districts that were monitored, every parent of a child in an exceptional student education (ESE) program was

mailed a postcard survey. Parents who wished to could participate in a more extensive survey by indicating so on the postcard. This process for parent input will be continued during the 1999-2000 monitoring cycle. In addition to this project, monitors meet with parent advisory groups in those districts where such groups exist.

18. What is being done at the state level to support more inclusive settings for students with disabilities?

The Individuals with Disabilities Education Act (IDEA) requires that children with disabilities be educated in the least restrictive environment. Children with disabilities should be included with their nondisabled peers to the maximum extent appropriate, as determined by their individual educational plans (IEPs).

In 1997, the Florida legislature revised the funding model for exceptional student education. One of the purposes of this revision was to support inclusive models. Under the new funding model, schools and districts are funded based on the level and intensity of exceptional student education (ESE) services needed and provided, no matter where those services take place. In this way, school districts are not penalized when children with disabilities receive ESE services in the regular education classroom.

The Florida Department of Education also funds several projects which train teachers on the use of instructional strategies that allow students with disabilities to participate in the regular education classroom. One project helps administrators to look at using school resources most effectively to set up an inclusive environment. The Florida Inclusion Network has regional staff throughout the state who provide on-site technical support and assistance to schools needing help in developing inclusive settings.

19. How can students with disabilities be included fairly in the statewide testing/program?

Most students with disabilities are expected to participate in the statewide testing program unless the individual educational plan (IEP) committee determines that the regular state assessment is not appropriate for the student. Appropriate reasons for exclusion of students with disabilities are the following:

- The student cannot be expected to master the Sunshine State Standards because of cognitive functioning level.
- The student's instruction is individualized, skill and context specific, and directed at mastery of the Sunshine State Standards for Special Diploma.

For students who take the regular statewide assessment, appropriate accommodations must be identified by the IEP committee and implemented at the time of testing. The use of appropriate accommodations is intended to level the playing field for students with disabilities, thus making for a fair assessment situation providing meaningful information on the student's progress on the Sunshine State Standards. The results of statewide assessment are reported to

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the district, school, and the parents.

For the few students who are excluded from the regular state assessment, the IEP committee must determine how each student will be assessed for progress. The results of the alternate assessment must be given to the parent and could be incorporated in a report card system.

20. How can students with disabilities be included fairly in the state's accountability system?

The accountability of students with disabilities is an important part of the entire accountability system in Florida. Students with disabilities are included in the accountability system in the following ways:

- State assessment scores of students with disabilities are reported to each school district, school, and individually (for parents).
- A major state initiative is the inclusion rate of students with disabilities in state assessments. Inclusion data is sent yearly to districts for comparison of individual district inclusion rates to state inclusion rates. A goal of 85% inclusion is suggested, based on national percentages of students with cognitive disabilities.
- One of the criteria for schools to receive grades of A or B in the state's accountability reporting is the inclusion of students with disabilities in the testing program.
- The IEP committee must make the decision about participation in assessment.

The Florida Department of Education continues to investigate means of including students with disabilities in the accountability system. Test scores are not the only accountability measure. Reporting test scores of students with disabilities must be meaningful and fair to the student and school districts must be accountable for their students with disabilities.

Opportunity Scholarships

21. Will opportunity scholarships be available to children with disabilities who are enrolled in exceptional student education programs?

Yes, if the student is assigned, would be assigned, or is enrolled in a public school graded "F" by the state. Schools are graded based on test scores and other factors in a new grading system. The school must have received an "F" for two years of a four year period.

22. Will parents be able to choose a specific school for the use of the opportunity scholarship?

The scholarship money follows the child, so a child may attend another public school or an eligible private school that agrees to participate in the program. If parents choose to send their child to another public school, school districts are required to honor the option of transferring the child to a school that has been graded at least a "C" by the state.

23. If a child with a disability chooses to use an opportunity scholarship to attend a private school, who will be responsible for providing exceptional student education (ESE) services under the Individuals with Disabilities Education Act (IDEA)?

The requirements for students with disabilities who are placed in private schools by their parents through the opportunity scholarship program are the same as those for students who are otherwise placed by their parents in private schools. IDEA '97 substantially changed these requirements. Private school students with disabilities may receive a different amount of services than students with disabilities in public schools. Under IDEA, school districts are not required to provide students placed in private schools by their parents with the same service or amount of service the student would have received if enrolled in a public school. However, school districts are not prohibited from providing services to eligible private school students with disabilities in excess of those required by the IDEA.

Programs in the Department of Juvenile Justice (DJJ) Facilities

24. What is the role of the Florida Department of Education (DOE) in serving students with disabilities in the Florida Department of Juvenile Justice (DJJ) facilities?

Local school districts are responsible for providing educational services to all students in any DJJ facility that is located in their county. Monitoring visits conducted by the Florida DOE include DJJ facilities during the district's regular monitoring cycle. In addition, personnel from the Florida Department of Juvenile Justice and the Florida DOE conduct yearly quality assurance visits to the DJJ education facilities.

Feedback from these visits is used to improve the quality of educational services provided by the facility. Any reports with findings of noncompliance with state or federal laws include corrective actions.

Programs for Adults with Disabilities

25. With the recent changes in state legislation, what educational programs and services will be available for adults with disabilities?

Adults with disabilities are currently served in adult education and vocational education programs through school districts or community colleges. Adults with disabilities can be served in either mainstream or specialized settings. These programs are funded from various sources depending on the intended program outcomes. As required by the 1999 Legislature, the Florida Department of Education (DOE), Division of Workforce Development staff are working with Developmental Disabilities Council staff to develop a request for proposal (RFP) process to be submitted to the Florida Legislature by February 1, 2000. This means

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that community organizations will submit grant applications in order to receive funding for educational programs for adults with disabilities. It is anticipated that specialized adult education programs will be funded through this RFP process for the 2000-2001 school year. The DOE will continue to work closely with its interagency partners and will solicit input from stakeholders as the educational needs of adults with disabilities are addressed.

Teacher Qualification

26. Are special education teachers required to have certification in the field in which they are teaching?

The qualifications for special education instructional personnel are established in State Board of Education Rules. Rule 6A-1.0503, FAC, requires that teachers either be certified in the field in which they teach, be qualified under Rule 6A-1.0502, FAC, or be working toward certification in their field. The increase in the number of students together with the decrease in the number of teachers has created a shortage of certified teachers in almost every field of education. When it becomes necessary to hire an out-of-field teacher, the State of Florida requires that the teacher complete six hours of course work each year toward the completion of the appropriate certification.

Rule 6A-1.0502, FAC, states that districts may use persons who possess expert skill in or knowledge of a particular subject or talent, but do not hold a Florida teaching certificate. In order to use these experts, the district must adopt the policies and procedures that are explained in the rule. This rule also pertains to occupational therapists, physical therapists, audiologists, and speech pathologists who are either certified or licensed by a state agency, although not certified as a teacher by the Florida Department of Education.

The Florida Department of Education supports out-of-field teachers who take additional course work toward certification in exceptional student education by reimbursing up to $234 for each three-hour course. This program is called the Critical Teacher Shortage Tuition Reimbursement Program. Additional information and applications may be obtained from Dr. Cynthia Burton, Program Specialist, Bureau of Instructional Support and Community Services, 325 West Gaines Street, Suite 601, Tallahassee, FL 32399-0400 or by phoning (850) 488-1106.

27. What is the requirement for certification for speech/language pathologists?

Certification in the area of speech/language impaired requires a master's degree or higher with a graduate major in speech/language pathology (Rule 6A-4.0176, FAC) In addition, six semester hours in education are required.

Due to the critical shortage in the number of speech/language pathologists employed in the public schools, the Florida Department of Education may issue one nonrenewable two-year

temporary certificate to a qualified applicant who holds a bachelor's degree in the area of speech/language impairment. Additionally, the Department may issue one nonrenewable, five-year professional certificate to allow for completion of the required master's degree program in speech/language impairment.

28. What can parents do to help keep qualified teachers from leaving the field of exceptional student education?

Stress induced burnout of competent special education teachers has been a concern of the profession and particularly the Council for Exceptional Children (CEC) for many years. In 1998, CEC published ***Retention of Special Education Professional: A Practical Guide of Strategies and Activities for Educators and Administrators***. This booklet contains strategies for teachers and administrators to use and is available through The National Clearinghouse for Professions in Special Education at (800) 641-7824. Parents might like to share this booklet with their child's teachers.

Parents of students with disabilities can foster a great deal of good will through

- a personal note of thanks written directly to the teacher
- a letter written to the principal acknowledging the competence and compassion of a quality teacher

These two expressions of appreciation and support could help with the burnout problem. Parents may also wish to become involved with the school improvement team of the school their child attends. These teams assist the administration and faculty of each school with everything from academic goal setting to decisions that could affect policy, bolstering the morale of the entire faculty at the school.

29. What resources do university teacher training programs have for special education?

Florida's institutions of higher education received $6.1 million in 1998 in federal discretionary grants and contracts for the purpose of training teachers in special education. These funds are authorized by the 1997 Amendments to IDEA to ensure that personnel who work with children with disabilities have the skills and knowledge that are needed to serve those children. For a listing of each of the 36 personnel preparation projects awarded to Florida's colleges and universities, parents may access the web site of the ERIC Clearinghouse on Disabilities and Gifted Education at http://ericec.org/osep/search.htm. The Council for Exceptional Children also publishes this information in hard copy form.

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30. How can parents and school districts work together to help update school-based personnel on the Individuals with Disabilities Education Act (IDEA) regulations and the requirements of the Americans with Disabilities Act?

Parents can be a wonderful source of information for teachers and administrators when a collaborative, positive, working relationship has been established. Parents may wish to obtain reference materials on the newly released regulations for the IDEA by accessing the web site of the Council for Exceptional Children (CEC) at http://www.cec.sped.org/. The CEC Clearinghouse may also be reached by phoning (888) 232-7733. Parents can work with their school advisory councils as well as individual teachers to share these materials.

Appendices

Exceptional Student Education Parent Services

Information and Training Resources

- **Bureau of Instructional Support and Community Services Clearinghouse Information Center**

  The Clearinghouse Information Center disseminates information concerning exceptional student education (ESE) programs, laws, and practices. Parents have access to all materials and many of the materials available are written specifically for parents. The Clearinghouse contact information is
  Bureau of Instructional Support and Community Services
  Division of Public Schools and Community Education
  Florida Department of Education
  614 Turlington Building
  Tallahassee, Florida 32399-0400
  Telephone: (850) 488-1879
  Suncom: 278-1879
  FAX: (850) 487-2679
  http://www.firn.edu/doe/commhome/

- **Web Page**

  The Bureau of Instructional Support and Community Services (BISCS) Web Page at http://www.firn.edu/doe/commhome/ provides information for parents about the Bureau's News, Organization, Directories, Services, Resources, and Publications.

- **Family/Educator Training Project**

  Implemented through the 19 Florida Diagnostic Learning Resources System (FDLRS) Associate Centers, the Family/Educator Training Project is a Florida Department of Education initiative designed to provide information to families and educators through a collaborative model.

Statewide or Regional Support Projects

- **SEDNET**

  The Multiagency Service Network for Students with Severe Emotional Disturbance (SEDNET) consists of 17 Regional Network Advisory Boards staffed by professionals to coordinate child welfare, children's mental health and juvenile resources, and out-of-school or home placements. SEDNET regions are aligned with the Department of Children of Families and the Department of Juvenile

Justice and offer services to families as well as students and professionals.

- **FDLRS Parent Services**

  The Florida Diagnostic and Learning Resources System (FDLRS) Parent Services component is one of the four major FDLRS functions. Its purpose is to assist districts and families of children who are in exceptional student education programs to work together to promote the educational achievement of children with disabilities.

- **Team Training on Positive Behavioral Support**

  The Team Training on Positive Behavioral Support project focuses on establishing a network to provide education and assistance to school personnel, families, and other support providers who live and work with individuals with disabilities who have significant challenging behaviors. Housed at the University of South Florida, the state training team consists of representatives from the Florida Department of Education, family organizations, human service agencies, and community based service providers who work with local districts to provide a proactive, assessment-based approach that is consistent with the science of human behavior.

Compliance and Conflict Resolution

- **Mediation**

  The state mediation program required by the Individuals with Disabilities Education Act is coordinated through the Florida Department of Education. The Justice Center of Atlanta provides initial and ongoing training. Mediation can be requested either by the district or by a parent involved in a dispute.

- **Conflict Resolution Training**

  The Florida Department of Education contracts with the Justice Center of Atlanta to offer conflict resolution seminars to parents and district staff throughout the state.

- **Monitoring**

  The monitoring process for district compliance with state and federal law now includes a parent input component. Florida Department of Education staff meet with parents and parent groups in the districts being monitored. Additionally, the University of Miami is conducting phone and written interviews with parents via a self-selection process.

- **Complaints**

  The Florida Department of Education staff, as mandated by federal and state law, handles formal complaints by parents against districts. Parents may file a complaint by putting it in writing to the district or to the Florida Department of Education.

Collaboration

- **State Advisory Committee**

  As required by the Individuals with Disabilities Education Act , parents make up at least 50% of the State Advisory Committee membership. These parents represent a cross section of families of children with disabilities, as well as socio-economic and cultural diversity. Many represent formal parent support and advocacy groups and are experienced in working on issues at the state level, while others represent those parents who are new to the issues facing families of children with disabilities.

- **Liaison with Parent Groups**

  The parent services coordinator acts as a liaison to statewide parent groups to insure ongoing communication and collaboration. Often, the Florida Department of Education is asked to provide technical support and expertise to projects, such as the Florida Institute for Family Involvement, the Family Source, and the Developmental Disabilities Council.

- **Liaison with Florida Department of Education Parent Initiatives**

  The Florida Department of Education collaborates with other Florida DOE sections in efforts that promote Goal 8, Parent Involvement, through participation in state and regional meetings as well as special projects. These areas include school improvement, prekindergarten, Title I, school volunteer recognition, English speakers of other languages, and teen parent programs. Collaboration ensures that resources are maximized, while the needs of children with disabilities are not overlooked.

- **Liaison with State Agencies**

  The parent services coordinator and other Florida Department of Education staff involved with parent services act as a liaison to state agencies in order to insure that initiatives involving families of children with disabilities are coordinated at a statewide level.

- **Family CAFÉ**

  The Family CAFÉ is a conference for and by families of persons with disabilities. The Florida Department of Education is working closely with the Family CAFÉ planning committee in order to support and assist with funding this effort.

- **Parents Educating Parents Project**

  The Parents Educating Parents project is funded by the Florida Department of Education in collaboration with the Family Network on Disabilities to meet the special needs of migrant families who have children with disabilities.

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Technical Assistance

- **Development of Parent Materials as a Component of Special Projects**

  Special Projects funded through the Florida Department of Education to provide technical support or model programs are now required to include parent information components when appropriate. This parent information component, developed with parent input, usually takes the form of an informational brochure that is distributed through the Bureau of Instructional Support and Community Services, Clearinghouse Information Center.

- **Exceptional Student Education Parent Involvement in the School Improvement Process**

  The Bureau of Instructional Support and Community Services provides technical support to the Florida Department of Education and local school districts to insure that parents of children with disabilities are included in the school improvement process so their special needs are addressed in school-based planning. This technical support involves awareness and training activities.

- **Topic Specific Training**

  Local and statewide parent groups frequently request training on issues that involve their children, such as quality individual educational plans, special diploma options, and transition.

SUMMARY of PROCEDURAL SAFEGUARDS

for STUDENTS with DISABILITIES

Revised July 1999

Notice

As a parent you have a right to receive a copy of a document which fully explains the procedural safeguards which are available to you. This document is to be provided to you upon your child's initial referral for evaluation, upon each notification of a meeting of the individual educational plan (IEP) team regarding your child, upon re-evaluation of your child, and upon the filing of a request for a due process hearing.

As a parent you also have a right to prior written notice. Specifically, you have a right to

- be notified a reasonable time before the school district: (a) identifies, evaluates, or places your child in an exceptional student education program, or provides a free appropriate public education (FAPE) to your child; (b) changes an identification, evaluation, or placement that has been made, or the provision of FAPE; or (c) refuses to take any of these actions after you have requested them.
- receive these notices, written in language understandable to the general public. Notices must be provided in your native language or other mode of communication, unless it is clearly not feasible to do so. If your native language or other mode of communication is not a written language, the school officials must see that: (a) the notice is explained to you orally or in a mode of communication you understand; (b) you understand the information you have been given; and (c) there is written evidence that this requirement has been met

The prior written notice must include the following items:

- a description and explanation of the action proposed or refused by the school district
- a description of any options the school district considered and why these options were not selected
- a description of any other relevant factors school officials considered in their proposal or refusal to take an action
- a description of each evaluation procedure, test, record, or report the school district will use as the basis for making any decision(s) regarding your child. "Evaluation" means procedures used to determine whether a child has a disability and to determine the nature and extent of the special education and related services that the child needs
- information about the protections available to you under the procedural safeguards as provided for in the Individuals with Disabilities Education Act (IDEA) and how you can get a copy of a document explaining these safeguards
- sources you may contact to get assistance in understanding your rights under IDEA

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Consent

Your written consent is necessary before the school district can

- test your child individually with any tests that are not generally given to other students prior to determining that your child is eligible for placement in an exceptional student education program
- place your child in an exceptional student education program for the first time
- re-evaluate your child

Parent consent is not required prior to a school district's review of existing data as part of an evaluation or re-evaluation.

Your consent must be given freely, and you may withdraw it at any time before the activity consented to takes place.

If you do not respond to the school district's request for your consent to re-evaluate your child, the school district may go ahead and conduct the re-evaluation if it can show that it made reasonable efforts to obtain the consent and you failed to respond.

If you do not give your consent, your child's basic right to attend school and participate in school activities will not be affected by your refusal. If you withhold or refuse consent for evaluation or placement, the school district may utilize informal procedures to obtain written consent. If informal procedures do not result in written parental consent, the school district must document its attempts to secure consent and may request an impartial hearing to resolve the issue. An Administrative Law Judge can order a school district to act without your consent; however, you may appeal the Administrative Law Judge's Order.

Meetings

As a parent, you have a right to participate in meetings which have to do with the identification, evaluation, eligibility, re-evaluation, and educational placement of your child, and the provision of a free appropriate public education to your child.

Independent Educational Evaluation

If you do not agree with the evaluation provided by the school — that is, if you don't think they gave the right tests or reached the right conclusions — you have the right to request that an independent educational evaluation be conducted at public expense. An "independent educational evaluation" means that your child will be tested by a qualified person who is not an employee of the school district. "Public expense" means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you. If you request that an independent educational evaluation be conducted at public expense, the school district, without unnecessary delay, must either initiate a due process hearing or ensure that an independent educational evaluation is provided at public expense. If you request an independent educational evaluation at public expense, the school district may ask you for a reason you object to the district's evaluation; however, you are not required to give a reason, and the district may not unreasonably delay its response to your request.

If the independent educational evaluation is provided at public expense, the criteria, including the location of the evaluation and the qualifications of the examiner, must be the same as those the school district uses when it initiates an evaluation. The school district may not impose any conditions or timelines for obtaining an independent educational evaluation at public expense other than those related to the location of the evaluation and the qualifications of the examiner.

If you have an independent educational evaluation conducted at your own expense and the evaluation meets the school district's criteria for similar evaluations initiated by the district, the results of this evaluation

- must be considered by the district in any decision regarding your child's free appropriate public education, and
- may be presented as evidence in a formal hearing (see "Hearings" section)

If an independent educational evaluation is requested by an Administrative Law Judge as part of a due process hearing, the evaluation must be at public expense.

Records

You have a right to

- receive a copy of the evaluation report and other documentation used to determine your child's eligibility for an exceptional student education program
- receive, upon your request, a list of the types of educational records kept on your child, where they are maintained, and how you can gain access to them
- inspect and review any of your child's records. The school must comply with your request to do so
  - Δ without unnecessary delay
  - Δ before an IEP meeting, a due process hearing, or any hearing related to your child's placement in an interim alternative educational setting, and
  - Δ within 30 days

You have a right to

- have someone from the school district explain or interpret any item in your child's records
- receive copies of the records if this is the only way to ensure that you will be able to review and inspect them. The school district may charge a fee for the copies, if such a charge does not prevent you from inspecting and reviewing the records. The district may not charge a fee for the time needed to search for or collect the information
- have a representative inspect and review the records

The school district may presume that you have the authority to inspect and review your child's records unless they have been informed that you do not have this right (for example, because of legal action such as a court order).

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The school district is responsible for protecting the confidentiality of your child's education records by

- only releasing information with your consent, unless otherwise allowed by state or federal law
- permitting you to see only that information which relates to your child when records contain information on more than one child
- keeping a record of all persons (except parents and authorized officials) who have obtained access to educational records, including the names, dates of access, and reasons for seeking access

If you feel that any statements in your child's records are wrong or misleading or violate the privacy of your child, you have a right to request a hearing to challenge this information. The school district must provide you with information on this process.

Mediation

As a parent, you have the right to participate in mediation with the school district as an informal way to resolve disagreements between you and the district. The Florida Department of Education makes mediation available at no cost to you or the school district. Mediation

- may be used to resolve disagreements relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education to your child, or whenever a due process hearing is requested
- is voluntary for both parties
- is conducted by a qualified and impartial mediator who has been trained in effective mediation techniques
- shall be scheduled in a timely manner and shall be held in a location that is convenient to both parties
- is confidential so that discussions which occur during the mediation process may not be used as evidence in due process hearings or civil proceedings
- shall not be used to deny or delay your right to a due process hearing, or to deny any other rights afforded to you

Any agreements reached during the mediation will be put in writing and signed by both parties. The parties may be required to sign a confidentiality pledge prior to beginning the mediation.

A list of qualified and impartial mediators is maintained by the Florida Department of Education, and mediators are selected from that list on a rotating basis. Mediators may not be employees of school districts or other agencies which provide educational services to students with disabilities; however, a mediator is not considered an employee of a school district or other agency just because he or she is paid to serve as a mediator.

Hearings

If, at any time, you cannot come to an agreement with the school district regarding your child's education, you and the school district have the right to ask for an impartial hearing. A hearing may be held on any matter relating to the identification, evaluation, or placement of your child, or the provision of a free appropriate public education to your child.

The hearing will be conducted for the Florida Department of Education by an impartial Administrative Law Judge from the Division of Administrative Hearings in accordance with the applicable Florida Statutes and State Board of Education Rules.

To obtain a hearing, you must provide a written request for a due process hearing to the superintendent of the school district. The school district office has a form you can fill out regarding your request for a hearing. You can use this form to provide the following information:

- the name of your child
- the address where your child lives
- the name of the school that your child is attending
- a description of the problem(s) you are having with the district, including the facts relating to the problem(s), and
- a proposed solution to the problem(s)

A district may not deny or delay your right to a hearing even if you fail to provide this information or use the form.

Administrative Law Judges

An impartial Administrative Law Judge will be assigned to preside over due process hearings and arrive at a decision. The Administrative Law Judge may not be

- an employee of a public agency (school district, institution, etc.) which is involved in the education or care of your child
- anyone who has a personal or professional interest which would conflict with their impartiality in the hearing

A person who otherwise qualifies to conduct a hearing in accordance with previously stated guidelines is not considered to be an employee of the public agency simply because he or she is paid by the agency to be an Administrative Law Judge.

A list of persons who serve as Administrative Law Judges and their qualifications is available upon request.

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Due Process Hearing Rights

Both you and the school district have the right to

- be accompanied and advised by legal counsel and by persons with special knowledge or training regarding the problems of exceptional students
- present evidence
- cross-examine and compel the attendance of witnesses
- receive copies of any evaluations and recommendations based on the evaluations which are intended to be used at the hearing, at least five business days prior to the hearing
- prohibit the introduction of evidence that had not been revealed to you or to the school district at least five business days before the hearing

You also have a right to

- be told by the school district of free or low cost legal help and other relevant services which may be available in the area. The school or district must give you this information at any time you request it or whenever a due process hearing is requested
- be told about the availability of mediation (however, since mediation is voluntary for both parties, the district has the right to choose not to participate in mediation)
- have your child attend the hearing, if you wish
- open the hearing to the public, if you wish
- have the hearing conducted at a time and place reasonably convenient to you
- receive a copy of the record of the hearing and the Final Order issued by the Administrative Law Judge. You may request either written or electronic copies of the documents, and they will be provided at no cost to you

Within 45 days of receipt of your request for a hearing, the Administrative Law Judge must reach a final decision and mail you a copy of the decision. The Administrative Law Judge may grant a specific extension to this time period at the request of either party. The decision of the Administrative Law Judge is final, unless either you or the school board choose to appeal it.

After deleting any personally identifiable information, the Florida Department of Education transmits the Final Order to the State Advisory Committee for the Education of Exceptional Students and makes it available to the public.

Appeals of Due Process Hearings

Following a due process hearing, either party, if not satisfied with the Administrative Law Judge's Final Order, has the right within 30 days to file an appeal and request a trial in the appropriate federal district court. The federal district court will receive the records of the administrative proceedings; hear additional evidence at the request of a party; and, basing its decision on the preponderance of the evidence, grant the relief it determines to be appropriate. Alternately, either party, if not satisfied with

the Administrative Law Judge's Final Order, has the right within 30 days to file an appeal and request a trial in the appropriate state court. The state circuit court shall receive the records of the administrative proceedings; hear additional evidence at the request of a party; and, basing its decision on the preponderance of the evidence, grant the relief it determines appropriate.

As another alternative, either party has the right to request the Final Order's review by the appropriate state district court of appeal pursuant to Section 230.23(4)(m) and Section 120.68 of the Florida Statutes. The district court of appeal may conduct a review of the Final Order.

Placement during Due Process Hearings and Appeals

During the time that any administrative or judicial proceeding is taking place, your child is to remain in his or her present educational placement unless you and the school district agree otherwise. If the dispute concerns the initial admission of your child to public school, then your child, with your consent, will be placed in a public school program until the completion of the proceedings. If an Administrative Law Judge agrees with you that a change of placement is appropriate, the new placement must be provided during the appeal process.

Attorneys' Fees

Only a district court of the United States or a state circuit court may award reasonable attorneys' fees as part of the costs to the parents of a child with disabilities who is a prevailing party in a due process hearing or in a subsequent judicial proceeding.

A parent of a child with a disability who is a prevailing party in the due process hearing or in a further proceeding may bring an action in a federal district court or a state circuit court for attorneys' fees within the time determined by law.

The court may deny a request for attorneys' fees for services performed after the district has made a written offer of settlement within the appropriate timelines if the parent did not accept the settlement within the appropriate timelines and the court determined that the relief finally obtained by the parents was not more favorable than the original settlement offer. However, attorneys' fees may be awarded if the parent was "substantially justified" in rejecting the offer.

Attorneys' fees may not be awarded for

- individual educational planning meetings (unless the meeting is convened as a result of a due process hearing or other judicial action), or
- mediation that is held prior to the filing of a request for a due process hearing

The court may reduce attorneys' fees if

- the parents unreasonably prolonged the time it took to resolve the dispute
- the attorneys' hourly rate or time spent in the proceedings was excessive, or
- the parents or their attorneys did not provide the district with the information listed in the section entitled "Due Process Hearings," when the parents or their attorneys requested a due process hearing

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However, attorneys' fees may not be reduced if the State or school district unreasonably delayed resolution of the dispute or violated its obligation to provide procedural safeguards.

Discipline

Short Term Removals

To the extent that children without disabilities would be disciplined, school district personnel may remove a child with disabilities for up to ten consecutive or cumulative school days in a school year when that child has violated the school district's Code of Student Conduct. The school district is not required to provide educational services during these removals.

Long Term Removals

The school district may also remove a child for more than ten cumulative days in a school year when the removal is not considered a pattern of exclusion. When determining whether or not there has been a pattern of exclusion, the following factors must be considered

- the length of each removal
- the total amount of time the child has been removed, and
- the proximity of the removals to one another

Whenever a child is removed for more than ten days in a school year, the school district must provide the child with services to the extent necessary to enable him or her to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the child's IEP.

If your child has been removed for more than ten school days and the removals constitute a pattern, the school district must notify you of this decision, provide you with a copy of the notice of procedural safeguards, and convene an IEP meeting within ten business days of the removal. The IEP team will

- review, in terms of the behavior subject to disciplinary action, all relevant information
- determine the relationship between your child's disability and the misconduct
- determine, in relationship to the behavior subject to disciplinary action, if your child's IEP and services were appropriately implemented
- determine whether the child's disability impaired the ability of the child to understand the impact and consequences of the behavior and the ability to control the behavior subject to disciplinary action
- plan for a functional behavioral assessment and develop a behavioral intervention plan for your child to address the behavior which resulted in the removal, or review and modify, as necessary, an existing behavioral intervention plan

If the IEP team determines that your child's behavior was not related to the disability, then your child can be disciplined and served in a different setting in the same manner as nondisabled children. If the IEP team determines that your child's behavior was caused by the disability, then your child cannot be

moved to a different setting unless the IEP team has determined that it is the most appropriate placement.

If you disagree with the decisions made, you have the right to request an expedited due process hearing.

Interim Alternative Educational Settings

An interim alternative educational setting (IAES) is a different location where educational services are provided for a specific time period due to disciplinary reasons. The IAES must be determined by the IEP team and must be selected so as to enable the child with a disability to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable him or her to meet IEP goals. The IAES must also include services and modifications to address the behavior which resulted in the removal and that are designed to prevent the misconduct from recurring.

If your child, as a student with a disability

- carries a weapon to school or to a school function or possesses a weapon at school or at a school function, or
- knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function,

the school district may place your child in an IAES for up to 45 calendar days without your written consent. When the decision to place your child in an IAES has been made, the school district must notify you of this decision that day and provide you with a copy of the notice of procedural safeguards. The school district must also follow all of the procedures described above under "Long Term Removals."

If you disagree with the decision and request an expedited due process hearing, during the pendency of the hearing, your child will remain in the IAES placement unless you and the school district agree otherwise or until the 45-day time period expires.

A school district can request, through an expedited hearing, that a hearing officer (Administrative Law Judge) place a child in an IAES for up to 45 calendar days if the school district believes that the child is dangerous to self or others. A school may seek subsequent expedited hearings and alternative placements if after the first 45-day term has expired, the school district maintains the child is still dangerous.

Private School Placements

The school district is not required to pay for the cost of the education, including special education and related services, for a child with a disability at a private school or facility if the district has made a free appropriate public education available to the child and the parents elect to place the child in a private school or facility. However, an Administrative Law Judge may require the school district to reimburse parents for the cost of a private school if the Administrative Law Judge finds that the school district had not made FAPE available to the child in a timely manner and the private placement is appropriate.

If you wish to ask an Administrative Law Judge to require the school district to fully reimburse you

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for the cost of placing your child in a private school or facility, you must have informed the school district that you were rejecting its proposed placement and stated your concerns and intent to enroll your child in a private school at public expense. You may do this by telling the IEP team of your decision at the most recent IEP meeting you attended prior to removing the child from the public school or by giving the school district written notice at least ten business days prior to the removal of your child from the public school.

An Administrative Law Judge may require the school district to reimburse you for the costs of the private school if you failed to comply with the notice requirements because

- you are unable to read and write, or cannot write in English
- complying with these requirements would have resulted in physical or serious emotional harm to your child
- the school district prevented you from providing notice
- the school district failed to inform you of your obligation to notify the school district

If you are seeking reimbursement, you must also make your child available for an evaluation if prior to your removal of your child from the public school the school district notified you of its intent to evaluate your child.

State Complaint Procedures

If you believe that a school district or other public agency has violated any of the requirements of the Individuals with Disabilities Education Act, you may file a formal written complaint. There are two ways you may file your complaint. You may file a written complaint with your school district's superintendent ("Local Education Agency" complaint), or you may file it with the Florida Department of Education ("State Education Agency" complaint). In either case, your written complaint must

- include a statement which describes how a requirement of the Individuals with Disabilities Education Act has not been met
- include an explanation of the facts on which the statement is based
- allege a violation that occurred within one year prior to the date when the complaint is filed unless the violation is continuing or you are requesting compensatory services for a violation which occurred within three years of the date when the complaint is filed

Local Education Agency Complaint

If you choose to file a complaint with the superintendent in your school district, you must provide the superintendent with a written complaint which meets the requirements listed above. Within five days from the time the superintendent receives your complaint, the district will notify the Florida Department of Education that it has received your complaint. The district may offer you mediation to resolve the concerns raised in your complaint. Within 25 days of the receipt of your complaint, the superintendent will provide you with a written response detailing the results of the district's inquiry. If you disagree with the results, you may appeal the district's response by writing to the Florida Department of Education.

State Education Agency Complaint

State complaints may be filed by sending a written complaint as described above to: Chief, Bureau of Instructional Support and Community Services, Florida Department of Education, Turlington Building, Room 614, 325 West Gaines Street, Tallahassee, Florida 32399-0400. Upon receipt of your formal complaint, the Bureau will advise you of your right to mediation. During the complaint process, the Bureau gives you an opportunity to submit additional information (either orally or in writing) about the allegations in your complaint and review all relevant information. An on-site visit may be made, if necessary. Within 60 days after the date of the complaint, a written independent decision will be issued. The decision will contain findings of fact, conclusions, and reasons for the decision. If appropriate, the final decision will include procedures for implementation of the decision. The 60-day timeline may be extended if exceptional circumstances exist.

If any of the issues contained in a complaint are also the subject of a due process hearing, those issues will be set aside until the conclusion of the hearing. Other issues will be resolved using the procedures described above. If an issue is raised in a complaint that has previously been decided through a due process hearing, the Administrative Law Judge's decision is final and will not be reconsidered through the complaint procedure.

This sample notice has been revised consistent with the final regulations implementing the 1997 Amendments to the Individuals with Disabilities Education Act (IDEA) and provided to all Florida school districts and public agencies providing education and related services to children with disabilities. The sample notice was developed and disseminated by the Florida Department of Education, Division of Public Schools and Community Education, Bureau of Instructional Support and Community Services.

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SUMMARY of PROCEDURAL SAFEGUARDS for STUDENTS WHO ARE GIFTED

Revised August, 1999

Notice

As a parent, you have a right to receive a copy of a document which fully explains the procedural safeguards which are available to you. This document is to be provided to you when you give your consent for an initial evaluation or placement, with any prior written notices of actions proposed or refused by the district, and when a request for a due process hearing is filed.

As a parent, you also have a right to prior written notice. Specifically, you have a right to

- be notified a reasonable time before the school district (a) identifies, evaluates, or places your child in an exceptional student education program or provides a free appropriate public education (FAPE) to your child; (b) changes an identification, evaluation, or placement that has been made or provision of FAPE; or (c) rejects your request that these actions be taken

- receive all such notices in writing and in the language you speak and understand best, unless it is clearly not feasible to do so. If your native language is not a written language, the school officials must see that (a) the notice is explained to you orally or in a mode of communication you understand, (b) you understand the information you have been given, and (c) there is written evidence that this requirement has been met.

The prior written notice must include the following items:

- a description and explanation of the action proposed or refused by the school district

- a description of any options the school district considered and why these options were not selected

- a description of each evaluation procedure, test, record, or report the school district will use as the basis for making any decision(s) regarding your child. "Evaluation" means procedures used to determine whether a child is gifted and to determine the nature and extent of the exceptional student education services that the child needs.

- a description of any other factors relevant to the district's proposal or refusal to take an action

- a full explanation of all procedural safeguards available to you

Consent

Your written consent is necessary before the school district can

- test your child individually with any tests not generally given to most other students prior to placing your child in an exceptional student education program

- place your child in an exceptional education program for the first time

Parent consent is not required prior to a school district's review of existing data as part of an evaluation.

Your consent must be given freely, and you may withdraw it at any time before the activity consented to takes place.

If you do not give your consent, your child's basic right to attend school and participate in school activities will not be affected by your refusal. If you withhold or refuse consent for evaluation or placement, the school district may utilize informal procedures to obtain written consent. If informal procedures do not result in written parental consent, the school district must document its attempts to secure consent and may request an impartial hearing to resolve the issue. An Administrative Law Judge can order a school district to act without your consent; however, you may appeal the Administrative Law Judge's Order.

Meetings

As a parent, you have a right to participate in any educational plan (EP) or individual educational plan (IEP) meetings held about your child.

Independent Educational Evaluation

If you do not agree with the evaluation provided by the school—that is, if you don't think they gave the right tests or reached the right conclusions—you have the right to request that an independent educational evaluation be conducted at public expense. An "independent educational evaluation" means that your child will be tested by a qualified person who is not an employee of the school district. "Public expense" means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you. If you request that an independent educational evaluation be conducted at public expense, the school district, without unnecessary delay, must either initiate a due process hearing or ensure that an independent educational evaluation is provided at public expense.

If the independent educational evaluation is provided at public expense, the criteria, including the location of the evaluation and the qualifications of the examiner, must be the same as those the school district uses when it initiates an evaluation. The school district may not impose any conditions or timelines for obtaining an independent educational evaluation at public expense other than those related to the location of the evaluation and the qualifications of the examiner.

If you have an independent educational evaluation conducted at your own expense and the evaluation meets the school district's criteria for similar evaluations initiated by the district, the results of this evaluation

- must be considered by the district in any decision regarding your child's free appropriate public education, and
- may be presented as evidence in a formal hearing (see "Hearings" section)

If an independent educational evaluation is requested by an Administrative Law Judge as part of a due process hearing, the evaluation must be at public expense.

Records

You have a right to

- receive a copy of the evaluation report and other documentation used to determine your child's eligibility for an exceptional education program
- receive, upon your request, a list of the types of educational records kept on your child, where they are maintained, and how you can gain access to them
- inspect and review any of your child's records. The school district must comply with your request to do so
  - ▲ without unnecessary delay
  - ▲ before an IEP or EP meeting or hearing, and
  - ▲ within 30 days

You have a right to

- have someone from the school district explain or interpret any item in your child's records
- receive copies of the records if this is the only way to ensure that you will be able to review and inspect them. The school may charge a fee for the copies if such a charge does not prevent you from inspecting and reviewing the records. The district may not charge a fee for the time needed to search for or collect the information.
- have a representative inspect and review the records

The school district is responsible for protecting the confidentiality of your child's education records by

- only releasing information with your consent, unless otherwise allowed by state or federal law
- permitting you to see only that information which relates to your child when records contain information on more than one child
- keeping a record of all persons (except parents and authorized employees of the participating agency) obtaining access to educational records, including the name, date of access, and purpose

If you feel that any statements in your child's records are wrong or misleading or violate the privacy of your child, you have a right to request a hearing to challenge this information. The school district must provide you with information on this process.

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Hearings

If at any time you cannot come to an agreement with the school district regarding your child's education, you and the school district have the right to ask for an impartial hearing. A hearing may be held on any matter relating to the identification, evaluation, or placement of your child or the provision of a free appropriate public education to your child.

The hearing will be conducted for the Florida Department of Education by an impartial Administrative Law Judge from the Division of Administrative Hearings in accordance with the applicable Florida Statutes and Board of Education rules. To obtain a hearing, you must provide a written request to the office of the superintendent of the school district.

Administrative Law Judges

An impartial Administrative Law Judge will be assigned to preside over any such hearing and arrive at a decision. To ensure impartiality, this Administrative Law Judge may not be

- an employee of a public agency (school system, institution, etc.) which is involved in the education or care of your child
- anyone who has a personal or professional interest which would conflict with their impartiality in the hearing

A person who otherwise qualifies to conduct a hearing in accordance with previously stated guidelines is not considered to be an employee of the agency simply because he or she is paid by the agency to be an Administrative Law Judge.

A list of persons who serve as Administrative Law Judges and their qualifications is available on request.

Due Process Hearing Rights

Rights to which both you and the district are entitled include the right to

- be accompanied and advised by legal counsel and by persons with special knowledge of or training in the problems of exceptional students
- present evidence
- cross-examine and compel the attendance of witnesses
- receive copies of any evaluations and recommendations based on the evaluations, which are intended to be used at the hearing, at least five business days prior to the hearing
- prohibit the introduction of evidence that had not been revealed to you or to the school at least five business days before the hearing
- obtain written or electronic verbatim records of the hearing
- obtain written findings of fact and decisions

You also have a right to

- be notified regarding your rights and responsibilities before, during, and after the hearing
- be told by the school district of free or low-cost legal help and other relevant services which may be available in the area. The school district must give you this information at any time you request it, or whenever a due process hearing is requested.
- have your child attend the hearing, if you wish
- open the hearing to the public, if you wish
- have the hearing conducted at a time and place reasonably convenient to you

Within 45 days of receipt of your request for a hearing, the Administrative Law Judge must reach a final decision and mail you a copy of the decision. The Administrative Law Judge may grant a specific extension to this time period at the request of either party. The decision of the Administrative Law Judge is final, unless either you or the school district choose to appeal it.

After deleting any personally identifiable information, the Florida Department of Education transmits the Final Order to the State Advisory Committee for the Education of Exceptional Students and makes it available to the public.

Appeals of Due Process Hearings

Following a due process hearing, either party, if not satisfied with the Administrative Law Judge's Final Order, has the right to file an appeal within 30 days and request a trial in the appropriate state court. The state circuit court shall receive the records of the administrative proceedings, hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, grant the relief that it determines appropriate. As an alternative, either party has the right to request the Final Order's review by the appropriate state district court of appeal pursuant to Section 230.23(4)(m) and Section 120.68 of the Florida Statutes. The district court of appeal may conduct a review of the Final Order.

Placement During Due Process Hearings and Appeals

During the time that any administrative or judicial proceeding is taking place, your child is to remain in his or her present educational placement unless you and the school district agree otherwise. If the dispute concerns the initial admission of your child to public school, then your child, with your consent, will be placed in a public school program until the completion of the proceedings. If an Administrative Law Judge agrees with you that a change of placement is appropriate, the new placement must be provided during the appeal process.

The sample notice was developed and disseminated by the Florida Department of Education, Division of Public Schools and Community Education, Bureau of Instructional Support and Community Services.

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FLORIDA
Department
of Education

www.firn.edu/doe

Tom Gallagher, Commissioner

ESE 10652

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